

## **Pre-nup Update: The Law Commission launches its consultation on “Marital Property Agreements”**

Following last year’s important case on prenuptial agreements, the Law Commission has recently launched its consultation on potential reforms to the law.

In a press release, Professor Elizabeth Cooke, the Law Commissioner leading the project, said:

“Our consultation paper considers the arguments for and against reform and examines how a new approach might balance the desire of some couples to plot their own future with more certainty against the need for safeguards against exploitation and the creation of hardship. This is an issue that needs to be handled with care.”

The Law Commission has asked for feedback from the public, the legal profession and any other interested parties to the following two questions related to pre-nups:

1. Whether or not couples should be able to make agreements which exclude the courts’ powers to allocate property on divorce;
2. Whether or not such agreements should be restricted to certain types of property (i.e acquired before the marriage or inherited).

The consultation paper questions whether prenups support the concept of marriage by removing the disincentive of sharing wealth upon divorce or devalue marriage by disregarding the old age tradition of mutual commitment and support.

The public consultation closes on 11 April 2011. In the meantime, the Law Commission has made some provisional proposals for reform. In simple terms they have suggested that the following would be the basic (and required) conditions for a pre- or post-nup to be enforceable:

1. Both parties must intend to be legally bound by the agreement
2. There must be no fundamental mistake, duress, undue influence or misrepresentation of key information surrounding the agreement;
3. The agreement must be in writing and signed by both parties;
4. There must be material full and frank disclosure of the other party’s financial situation;

5. Each party must have had independent legal advice (and not just an opportunity to obtain advice). As a minimum, the advice should include an explanation of the effect of the agreement, the legal rights of the party being advised and the advantages and disadvantages of the agreement;

A pre-nup would fail if it didn't, for example, adequately provide for the needs of any children of the family or if it left one spouse reliant on state benefits if that could be avoided by distributing the couple's resources in a different way. This would, by all accounts, seem entirely reasonable and aimed to prevent oppressive pre-nups from being enforced.

**If you have questions about prenuptial agreements, please contact Polly Morgan in our family team to request a copy of our booklet on prenuptial agreements.**